IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1742 OF 2007
IN
SUMMONS FOR JUDGMENT NO. 148 OF 2006
IN
SUMMARY SUIT NO.2763 OF 2005

Madan Mohan Ramprasad Kedia ..Plaintiff
V/s
Rajkumar Devidutta Saraf ..Defendant

Mr. K.K. Tated with Ms Aarti R. Khamkar for the Plaintiff.

Mr. B.N. Singh for defendant i/b Dinkar Rao for defenant to show cause.

CORAM : A.A. SAYED,J.
DATE : 26TH OCTOBER, 2007

P.C.

1. This Notice of Motion has been taken out by the plaintiff to set aside the order dated 21st November, 2006 and restore the Summons for Judgment and to rehear the Summons for Judgment on merits after giving an opportunity to the plaintiff to file affidavit-in-rejoinder and to condone the delay of 79 days in filing the above Notice of Motion.

2. The plaintiff has filed the above summary suit against the defendants for recovery of a sum of money given as loan to the defendant. The Summons for

Judgment was disposed of by order dated 21st November, 2006 and the order passed is as under:

> "None for the plaintiff though called out twice. Unconditional leave granted to Defendant to defend the suit.
>
> Suit transferred to commercial causes.
>
> Written statement to be filed within a period of 8 weeks from today."

3. The learned Counsel for the defendant has filed a reply stating that the defendant has already filed written statement as far back as on 12th January, 2007. The present Notice of Motion has been filed some time in May, 2007, though The affidavit in support of Notice of Motion was affirmed on 12th March, 2007.

4. In my view, the defendant ought to have filed the above Notice of Motion and moved the Court at the earliest possible opportunity. Once the Written Statement is filed no useful purpose will be served by setting the clock back particularly when the delay in filing the Notice of Motion has not been explained and no good cause is shown to condone the delay. It is noted that the Summons for Judgment was dismissed

for default and later restored on earlier occasion.

5. Learned Counsel for the plaintiff submits that atleast the Court may expedite the suit, the plaintiff being handicapped person and a Senior Citizen. The plaintiff is at liberty to take out fresh Notice of Motion for the same.

6. Notice of Motion is dismissed. No costs.

(A.A. SAYED, J.)